

Number: **200827004**
Release Date: 7/4/2008
Index Number: 115.02-00

Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact: _____, ID No. _____

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Refer Reply To:
CC:TEGE:EOEG:EO2
PLR-104100-08

Date:
March 24, 2008

Legend

Fund =

State =

A =

Statute =

Amendment =

Event =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

$$\underline{a} =$$
$$\underline{\mathbf{b}} =$$

C =

$$\bar{d} =$$
$$\underline{e} =$$

Dear _____ :

In Private Letter Ruling A, the Service ruled that the Fund was an integral part of the State for federal income tax purposes. An Amendment to the Statute was duly enacted as of Date 1 and will become effective on Date 2. On Date 3, the Fund's authorized representative requested a ruling on behalf of the Fund that the Amendment will not affect the Fund's status as an integral part of the State.

FACTS

The facts related to the Fund prior to the Amendment are detailed in Private Letter Ruling A. The Amendment modifies the Statute's financing provisions and does not alter or modify the Statute's provisions concerning the Fund's governance (e.g., the composition and duties of the Fund's governing board). Thus, only facts related to the Fund's financing have changed, and they have changed only with respect to the industry assessments in the following fashion. Presently, Participating Insurers are potentially subject to two assessments (First and Second Industry Assessments) in order for the Fund to pay claims that arise from an Event. However, under the terms of the Statute, the Fund's ability to make the First Industry Assessment will expire on Date 2. The Fund estimates that the total amount available for the Fund in case of the Event would approximately be \$a, which would include the amount from the First Industry Assessment. The Fund estimates that, if made, the First Industry Assessment would provide the Fund with up to \$b to pay Event claims.

In anticipation of the Fund's inability to make the First Industry Assessment as of Date 2, and thus, depriving the Fund of an approximate amount of \$b in case of an Event, the Amendment was passed by the State Legislature. The Amendment provides that the Fund will be able to make a Third Industry Assessment against the Participating Insurers in case of an Event. The Third Industry Assessment can only be made against the Participating Insurers if an Event occurs for which the Fund's Available Capital, the Second Industry Assessment, and other underlying sources of funding prove to be insufficient.

Under the Third Industry Assessment, the Fund can assess Participating Insurers up to \$c. However, under the terms of the Amendment, only up to \$d can presently be assessed. Furthermore, the Fund's ability to make the Third Industry Assessment up to the full amount will decrease beginning on Year 1. It is expected that over a period of ten to twelve years following Year 1 the Fund's ability to make the Third Industry Assessment will be reduced to zero. Presently, it is estimated that with the Third Industry Assessment, the Fund will have approximately a total of \$e in available funds to pay Event claims. All other aspects of the Fund's financing remain the same.

LAW

In general, if income is earned by an enterprise that is an integral part of a state or a political subdivision of a state, that income is not taxable in the absence of a specific statutory authorization to tax that income. See, Rev. Rul. 87-2, 1987-1 C.B. 18; Section 511(a)(2)(B) of the Code; GCM 14407, C.B. XIV-1, 103 (1935), superseded by, Rev. Rul. 71-131, 1971-1 C.B. 28. When a state conducts an enterprise through a separate entity, however, the income of the entity may be excluded from gross income under section 115.

In Maryland Savings-Share Insurance Corp. ("MSSIC") v. United States, 308 F.Supp. 761, rev'd on other grounds, 400 U.S. 4 (1970), the State of Maryland formed a corporation to insure the customer accounts of state chartered savings and loan associations. Under MSSIC's charter, the full faith and credit of the state was not pledged for MSSIC's obligations. Only three of the eleven directors were selected by state officials. The district court rejected MSSIC's claim of intergovernmental tax immunity because the state made no financial contribution to MSSIC and had no present interest in the income of MSSIC. Although the district court was reversed on other grounds, the Supreme Court agreed with the lower court's analysis of the instrumentality and section 115 issues. The Supreme Court rejected MSSIC's position that "it is an instrumentality of the State and hence entitled to exemption from federal taxation under the doctrine of intergovernmental immunity and under section 115 of the Code." MSSIC, 400 U.S. at 7, n.2.

In State of Michigan and Michigan Education Trust v. United States, 40 F.3d 817 (6th Cir. 1994), the court held that the investment income of the Michigan Education Trust (MET) was not subject to current taxation under section 11(a) of the Code. The court's opinion is internally inconsistent because it concludes that MET qualifies as a political subdivision of the State of Michigan. (Id. at 825, 826), and that MET is in any event an integral part of the State of Michigan (Id. at 829). Moreover, the court's reliance on the factors listed in Rev. Rul. 57-128, 1957 C.B. 311, to reach its conclusion is misplaced. The revenue ruling applies to entities that are separate from a state. The factors in the revenue ruling do not determine whether an enterprise is considered a separate entity or an integral part of the state.

Nevertheless, in determining whether an enterprise is an integral part of the state, it is necessary to consider all of the facts and circumstances, including the state's degree of control over the enterprise and the state's financial commitment to the enterprise.

ANALYSIS AND CONCLUSION

As mentioned, the Amendment does not alter or otherwise modify the provisions concerning the Fund's governance (e.g. the composition, duties and restrictions placed on the Fund's Board). Therefore, the Amendment does not alter any of the key provisions that led to the previous ruling's determinations that the State had sufficient control over the Fund. Thus, the State continues to maintain control over the Fund.

The Amendment alters the Statute's financing provisions only by allowing the Fund to make a new Third Industry Assessment against the Participating Insurers in case of an Event. The Third Industry Assessment provides the Fund with additional funding following the expiration of the First Industry Assessment under the terms of the Statute. All other aspects of the Fund's financing remain the same. Thus, the Amendment has not materially altered the State's financial commitment to the Fund.

Accordingly, we conclude that the Amendment will not alter the Fund's status as an integral part of the State.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Sylvia F. Hunt
Assistant Branch Chief, Exempt Organizations
Branch 2 (Exempt Organizations/Employment
Tax/Government Entities)
(Tax Exempt & Government Entities)

cc: